

July 16, 2001

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
1 South Station, 2nd Floor
Boston, MA 02110

RE: D.T.E. 01-28 (Phase II)

Dear Secretary Cottrell:

On May 9, 2001, the Department issued a Notice of Investigation ("NOI") on its own Motion into the Billing Services to be Provided by Electric Distribution Companies to Competitive Suppliers Serving Customers in Their Service Territories.

On June 7, 2001, the Department hosted a Technical Conference to (as stated in the NOI) "discuss the establishment of a supplier single-bill option, modifications to the partial payment rules, and other billing related issues raised by participants." (at 3.) The Hearing Officer also called for written briefs responding to the question of whether the Department has the current statutory authority to consider implementing the supplier single-bill option.¹ He established June 29, 2001 as the date to submit initial comments, and July 16, 2001 as the end date for reply comments.

Several distribution companies and competitive suppliers, along with the Office of the Attorney General and the Massachusetts Division of Energy Resources ("DOER")

¹ This issue was not raised in the NOI. Presumably, the question came up between May 9, 2001 and June 7, 2001, as the NOI was silent as to any question of statutory authority, stating, "Consistent with our statement in D.T.E. 00-41, the Department will investigate the manner by which a supplier single-bill option may be made available to customers and suppliers within the existing statutory and regulatory framework." (at 2).

submitted comments concerning the scope of the Department's legislative authority.² The substance of the comments broke into two clearly demarcated categories, which are worth noting.

The distribution companies (and the Office of the Attorney General) took the position that the Department has no legal authority to develop and implement the supplier single-bill option without a legislative change.

The competitive suppliers (and DOER) took the position that the Department has the authority, under the current legislation, to promulgate the rules and regulations it determines necessary to develop and implement the single-bill option. DOER also emphasized that the Department has considered single billing to be one of the ways to advance a more robust, competitive market in Massachusetts.

DOER submits the following comments in reply to the distribution companies' arguments that the Department lacks the statutory authority to implement the single bill option.

The Distribution Companies' Reliance on a Prior Version of
The Legislation is Misplaced.

The distribution companies argue that the language of Chapter 164, § 1D limits billing to the options prescribed by the statute for the distribution companies; that suppliers are, by inference, excluded. In support of this interpretation, the distribution companies proffer the language of a rejected House version of the statute that included the following language:

"In order to promote customer choice and convenience in a restructured electricity market, distribution companies shall allow access to the following billing options:
(1) single bill from a non-utility supplier that shows energy and distribution charges;
(2) single bill from the distribution company that shows show such charges; or
(3) two bills: one from the non-utility supplier that shows energy-related charges, and one from the distribution company that shows distribution-related charges;"

The argument rests upon the fact that the final legislation does not include the single bill option included in the earlier bill. What the distribution companies fail to point out is how significantly the final legislation changed from this earlier bill, in respects that go beyond the question of billing options. The final legislation adds provisions for gas companies, includes appeal provisions and markedly changes the language concerning billing for both electric and gas distribution companies.³ All that can be drawn from the

² While comments were also submitted on the issues of partial payment rules and other proposed billing modifications, this reply is limited to the statutory authority of the Department to implement the supplier single-bill option.

³ Chapter 164, § 1D, in relevant part, provides: "Beginning January 1, 1998, all electric and gas (emphasis added) bills sent to a retail customer shall be unbundled... . Electric and gas (emphasis added) bills may reflect the total costs of services... . Not later than six months after said March 1, in order to promote customer choice and convenience in a restructured electricity and gas (emphasis added)... . Rules and

earlier bill proffered by the distribution companies is that it is not representative of the final intent of the Legislature as to the scope of Chapter 164, ? 1D.

The Distribution Companies Ignore the Primary Purpose of the Restructuring Act to Promote Competitive Markets in Massachusetts

It is important to emphasize that the Department, in implementing the Restructuring Act, has committed itself to "identifying and minimizing or eliminating all barriers to the development of an efficient competitive market in Massachusetts;" D.T.E. 01-54:Order Opening Investigation Into Competitive Market Initiatives; (June 29, 20001) (at 11). The Department itself has stated that," the primary benefit identified by commenters supporting competitive billing, a supplier single-bill option, can readily be accommodated within the existing regulatory framework by requiring distribution companies to offer a third billing option to customer and competitive suppliers."⁴ The Department has also stated that the ability of suppliers to send a single bill could assist in the development of the competitive generation market "because supplier-sent invoices could allow the supplier to create a brand name and to advertise and charge for services that they provide." ⁵

DOER, in conjunction the Department, is charged by Section 312 of the Acts and Resolves of 1997 to investigate and to study the manner in which metering, meter maintenance, and testing, customer billing, and information services have been provided by distribution companies since March 1998. As set forth in DOER's June 29, 1001 initial comments, DOER believes that the Department has the statutory authority to implement a supplier single bill option without legislative change.⁶ DOER's interpretation of its statutory authority should be accorded broad discretion; Nuclear Metals, Inc. v. Low-Level Radioactive Waste Management Board, 656 N.E. 2d 563, 421 Mass. 196 (1995).

Conclusion

DOER will not reiterate its June 29, 2001 comments except to emphasize the following two points:

1. The Department has the authority to develop and implement a supplier single-bill option under the current legislation; and

regulations relative to the appeals process for billing disputes or damage claims made by customers shall be published and distributed to customers as part of an education and outreach program. (emphasis added).

⁴ Report to the General Court Pursuant to Section 312 of the Electric Restructuring Act, Chapter 164 of the Acts and Resolves of 1997 on Metering, Billing and Information (December 29, 2000) ("MBIS Report") at 28.

⁵ MBIS Report at 27.

⁶ The Department apparently shared the view of DOER as to its authority to implement the supplier single bill option. The Department states, at page iv. of D.P.U. 96-100 Model Rules and Legislative Proposal that, "We will use this authority [the Electric Restructuring Act] to administer consumer protections through billing regulations applied to distribution companies and competitive suppliers who bill directly and through termination regulations for distribution companies and suppliers."

2. If the Department determines that offering a supplier single-bill option could advance the identification and minimization or elimination of barriers to the development of an efficient, competitive market in Massachusetts, it should take all steps necessary to develop and implement that option.

Respectfully submitted,

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T:/Legal/01-28 reply comments